

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER KELLER and U.S. POSTAL SERVICE,
POST OFFICE, Manheim, PA

*Docket No. 03-959; Submitted on the Record;
Issued July 28, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a lumbar spine condition in the performance of duty.

On August 14, 2001 appellant, then a 43-year-old part-time flexible letter carrier, filed a claim alleging that she sustained low back pain in the performance of duty on or before July 23, 2001. She attributed her condition to working 5 to 6 days a week for 10 to 12 hours a day in July and August 2001, while assigned to case break down and at times delivering 2 routes instead of 1. Appellant recalled that, in late July 2001, her symptoms were aggravated by twisting to place "mail in a curbside mailbox while sitting in the vehicle." She was placed in a light-duty clerical position on August 13, 2001.

Appellant consulted Dr. John W. Wolgemuth, Jr., an attending Board-certified family practitioner, who obtained an August 15, 2001 lumbar computerized tomography (CT) scan showing a left paramedian and central disc herniation at L5-S1 with slight compression of the left S1 nerve root. In August 14 and 17, 2001 reports, Dr. Wolgemuth noted appellant's one-month history of low back pain with radiation into the left leg, aggravated by twisting and bending, prolonged sitting, driving and twisting while delivering mail and indicated that he recalled no acute trauma. Dr. Wolgemuth diagnosed low back pain likely of musculoskeletal etiology, but that radiculopathy must also be considered. He limited lifting to 10 pounds with no bending, twisting or stooping and held appellant off work pending a neurological consultation.

Appellant flew to California on August 22, 2001, after her sister's death, to help care for her sister's nine-month-old son.¹ While in California, on August 27, 2001, she experienced severe lumbar pain and spasm radiating into the left lower extremity and sought medical treatment. In an August 28, 2001 report, Dr. Christel Zeumer, an emergency room physician,

¹ In a March 5, 2002 letter, appellant explained that her nephew was born prematurely and weighed only nine-and-a-half pounds in August 2001, less than her 10-pound lifting limitation.

related appellant's symptoms and recent history of a herniated L5-S1 disc and noted that she was a postal worker. Dr. Zeumer diagnosed an "acute exacerbation of subacute low back pain with L5-S1 herniated disc." Appellant remained in California through September 9, 2001.

By decision dated October 10, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she submitted insufficient rationalized medical evidence to establish a causal relationship between factors of her federal employment and the claimed lumbar condition. She disagreed with this decision and, in a November 5, 2001 letter, requested a review of the written record by a representative of the Office's Branch of Hearings and Review. Appellant asserted that in July and August 2001, there were only 3 weeks in which she worked less than 40 hours,² exceeding the 36 hours noted on her November 20, 1998 call-in notice.³ She submitted additional evidence.

In a September 14, 2001 report, Dr. V. Ward Barr, an attending Board-certified neurosurgeon, noted that appellant performed "heavy" work as a letter carrier. He commented that her trip to California in August 2001, caused "severe pain after trying to be involved with the funeral and belongings and such along with a nine-month-old baby." Dr. Barr diagnosed a herniated L5-S1 disc with left-sided radiculopathy causing pain, numbness and weakness and recommended surgical decompression.

In an October 18, 2001 report, Dr. Wolgemuth noted that appellant had fallen "from time to time during the previous year" and had an acute flare of lumbar symptoms while in California in late August 2001. Dr. Wolgemuth explained to appellant "the difficulty of establishing a causative relationship between maneuvers and a herniated disc" and that she would "have to work this out with her employer."

By decision dated and finalized April 29, 2002, an Office hearing representative affirmed the Office's October 10, 2001 decision. The hearing representative noted that appellant submitted insufficient medical evidence to establish a causal relationship between the herniated lumbar disc and work factors. The hearing representative also found that the record lacked a detailed description of the relevant work factors.

² Appellant submitted time cards from April to August 2001 showing that she worked up to 51.3 hours a week.

³ The November 20, 1998 "call-in notice" states that the part-time flexible carrier position was for approximately 36 hours a week, but that there was no guaranteed schedule or number of hours. In a November 19, 2001 letter, the employing establishment characterized appellant's duties as "medium" work, with lifting up to 20 pounds frequently and 50 pounds occasionally. She stood and cased mail for two to three hours, which also involved bending and lifting and delivered her route in four to five hours. Appellant was scheduled to work 36 hours a week.

Appellant disagreed with this decision and requested reconsideration in a September 4, 2002 letter.⁴ She described the employment factors alleged to have caused the claimed lumbar condition, including heavy lifting, repetitive bending and twisting and overwork. Also, appellant newly alleged an August 13, 2001 incident in which she fell “while lifting a 45-pound parcel up the stairs,” causing back pain. She reported the fall to her supervisor, Stephanie Zimmerman, and that she would see her doctor.

By decision dated December 2, 2002, the Office denied modification of the prior decision on the grounds that appellant submitted insufficient evidence to warrant such modification. The Office found that, although appellant submitted a detailed description of the work factors alleged to have caused her lumbar condition, she failed to submit sufficient medical evidence to establish a causal relationship between those factors and the herniated lumbar disc. Appellant filed her appeal with the Board on March 6, 2003.

The Board finds that appellant has not established that she sustained a lumbar condition in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

The medical evidence of record indicates that appellant sustained a herniated L5-S1 disc with left-sided radiculopathy. The August 15, 2001 CT scan demonstrates a herniated L5-S1 disc with compression of the S1 nerve root on the left. The September 14, 2001 report of Dr. Barr, an attending neurosurgeon, establishes that the herniated disc caused left radicular pain and paresthesias into the left lower extremity.

However, the Board notes that appellant submitted conflicting accounts of the work factors alleged to have caused her lumbar condition. In September 18 and November 5, 2001 letters, appellant attributed her lumbar condition, including the herniated disc, to overwork in July and August 2001. She specifically alleged that repetitive lifting, bending and twisting caused her condition. While appellant reiterated these allegations in her September 4, 2002 letter, she newly alleged an August 13, 2001 incident, in which she stated that she injured her back falling down stairs with a 45-pound parcel. As appellant filed an occupational disease claim for a lumbar condition caused by work factors over more than one duty shift, her apparent

⁴ Appellant resubmitted a March 20, 2001 letter from the employing establishment commending her for not using any sick leave in 2000. *Id.*

⁵ *Donna L. Mims*, 53 ECAB __ (Docket No. 01-1835, issued August 13, 2002); *Charles E. Burke*, 47 ECAB 185 (1995).

assertion that a traumatic incident caused the herniated lumbar disc is problematic. Although appellant contended that she reported this incident to her supervisor, there is no accident report or supervisory statement of record corroborating that the August 13, 2001 incident occurred as alleged. Moreover, this incident is not mentioned in any medical report of record. It is thus, unclear from the record as to which factors appellant alleged as causative, as her account of events changed over time.

The Board finds that appellant submitted insufficient medical evidence to establish a causal relationship between the claimed lumbar condition and factors of her federal employment. Dr. Wolgemuth stated in his October 18, 2001 report that it was difficult to establish a “causative relationship between maneuvers and a herniated disc” and that appellant would have to pursue that issue with the employing establishment. Dr. Zeumer, an emergency room physician, who treated appellant on August 28, 2001 while she was in California, noted that appellant was a postal worker, but did not discuss any of her duties. She diagnosed an “acute exacerbation” of low back pain and the herniated L5-S1 disc, but did not explain what caused that exacerbation. Dr. Barr noted in his September 14, 2001 report that appellant performed “heavy” work as a letter carrier, but did not discuss specific work factors. Also, he attributed appellant’s August 27, 2001 flare-up to the nonoccupational factors of traveling to California, caring for a baby and “trying to be involved with [her sister’s] funeral and belongings and such....” The medical reports of record either attribute appellant’s lumbar symptoms to nonoccupational factors or to no specific cause. The medical record contains insufficient rationale to establish causal relationship.⁶

The decisions of the Office of Workers’ Compensation Programs dated December 2 and April 29, 2002 are hereby affirmed.

Dated, Washington, DC
July 28, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Lois E. Culver (Clair L. Culver)*, 53 ECAB ____ (Docket No. 01-640, issued March 5, 2002); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).